

IEMA

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Chief, Rules and Directives Branch
Division of Administration Services
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To Whom It May Concern:

In response to the request for public comments for the United States Nuclear Regulatory Commission's (USNRC) development of the technical basis for rulemaking proposing to revise USNRC regulations on the security requirements for the transportation of Radioactive Materials Quantities of Concern (RAMQC), the Illinois Emergency Management Agency, Division of Nuclear Safety (IEMA) would like to take this opportunity to open dialogue on key issues that need to be addressed during this process. As an Agreement State with a 274i agreement for conducting RAMQC security compliance inspections and a transportation inspection program that is proactive in ensuring transportation security, IEMA believes these comments to be technically valid and that resolution of these issues is necessary to ensure a consistent approach to safety and security for RAMQC, before going to rulemaking.

Under the USNRC Order issued July 19, 2005 and the subsequent Additional Security Measures (ASM) to the Order, **Section A: General Basis Criteria, Part 2 (8)** of the ASM states, "The requirements of these ASMs apply to RAMQC domestic shipments within the United States, imports into the U.S., or exports from the U.S. The requirements of these ASMs do not apply to transshipments through the U.S." Source manufacturers currently conducting transshipments are following the ASMs on a voluntary basis. With the largest number of Category 1 RAMQC shipments moving through the U.S. being transshipments, IEMA believes this approach to be counter intuitive. If the objective of this proposed rule making is to "ensure the adequate protection of public health and safety and to promote the common defense and security, and protect the environment", then it is imperative all Category 1 RAMQC shipments moving on U.S highways and railroads be regulated uniformly under this rule.

One possible solution to this outstanding issue problem would be to require carriers of Category 1 RAMQC to become a General Licensee of the USNRC. As part of the licensing process, the carrier could be required to meet the minimum standards in the current order and subsequent rule. This would effectively eliminate the "voluntary compliance" circumstance that currently exists and remove any distinction between domestic and transshipments, from a regulatory perspective.



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IEMA considers portions of the ASMs to use language that may lead to subjective interpretations by licensees. For example, **Section B Specific Requirements, Part 3 Preplanning and Coordination, Subpart (b)** reads, "The licensee shall ensure that states are provided with position information on a shipment, *if requested and practical*" and again in **Part 4 Notifications, Subpart (c)** "...The licensee shall ensure that the notification is received at least seven (7) days, where practicable, before the U.S. highway or rail portion to a shipment commences". We believe the use of the word "practical" is ambiguous and should be omitted from all text in the final rule.

A critical part of the ASMs is the definition of a "safe haven". One of the shortcomings of 49 CFR is the lack of any classification of a safe haven for Class 7, radioactive material. Only hazard Class 1, explosives material, has a safe haven as defined by **397.5 Attendance and surveillance of motor vehicles (d) (3)** "A safe haven is an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials". IEMA strongly encourages both USNRC and the United States Department of Transportation to work together to correct this situation by including this definition or incorporating a version of the USNRC's definition for safe havens in both 49 CFR and any rulemaking activity related to the ASMs.

IEMA staff attended the USNRC's public meeting for RAMQC at the Lisle, Illinois Region III office on January 15, 2008 and would like to take this opportunity to provide responses to two of the questions presented in the literature provide at the meeting.

Question One: Should the staff revise the requirements of 10 CFR Part 20 or Part 73?

Response: IEMA believes the final rule for RAMQC should be in Part 73 of 10 CFR. Since Part 73 covers security measures for the transport of spent nuclear fuel, any additional rules for the security of radioactive material transportation should be placed in this section of the CFR.

Question Two: Should the USNRC issue these requirements under its authority to protect public health and safety or under its authority to promote the common defense and security?

Response: There is a direct correlation between public health and safety and the defense and security realm. If one is adversely affected then so is the other. Whether these requirements fall under the auspices of public safety or national security, IEMA greatly encourages the Commission to continue to work closely with the stakeholders as the rulemaking process continues.

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IEMA would like to thank the USNRC for taking these suggestions under consideration and look forward to working with you in the future to achieve our common goal; the health and safety of the public, the common defense of the country and the environment through the safe and secure use of radioactive material.

Sincerely,



Joseph G. Klinger
Assistant Director